**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 12 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

SAMUEL CARTER,

Plaintiff - Appellant,

v.

JAMES O'MALLEY; et al.,

Defendants - Appellees.

No. 06-35548

D.C. No. CV-05-00016-RRB

MEMORANDUM [*]

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, District Judge, Presiding

Submitted February 26, 2008 [**]

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Samuel Carter appeals pro se from the district court's summary judgment for defendants in his 42 U.S.C. § 1983 action alleging that the warrantless search of his hotel room violated the Fourth Amendment. We have jurisdiction pursuant to

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

28 U.S.C. § 1291. We review de novo, *Blankenhorn v. City of Orange*, 485 F.3d 463, 470 (9th Cir. 2007), and we may affirm for any reason supported by the record, *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 888 (9th Cir. 1994). We affirm.

Although the district court failed to apply the two-step test outlined in *Saucier v. Katz*, 522 U.S. 194 (2001), it correctly determined that defendants were entitled to qualified immunity. Under *Saucier*, courts "must examine first whether the [officers] violated [the plaintiff's] constitutional rights on the facts alleged and, second, if there was a violation, whether the constitutional rights were clearly established." *Desyllas v. Bernstine*, 351 F.3d 934, 939 (9th Cir. 2003) (citing *Saucier*, 533 U.S. at 201).

Viewing the summary judgment record in the light most favorable to Carter, *see Blankenhorn*, 485 F.3d at 470, the facts here may well support a Fourth Amendment violation, *see Saucier*, 533 U.S. at 201. However, the existence of a reasonable expectation of privacy under the circumstances alleged was not clearly established at the time of the incident involving Carter. *See id.* at 202 (holding that for purposes of qualified immunity, "[t]he contours of [a] right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."); *United States v. Dorais*, 241 F.3d 1124, 1129 (9th Cir. 2001) (clarifying that, despite the "general rule [that] a defendant's expectation of privacy

in a hotel room expires at checkout time[,]" "the policies and practices of a hotel may result in the extension past checkout time of a defendant's reasonable expectation of privacy."). Carter's reliance on post-incident case law is unavailing. *See Osolinski v. Kane*, 92 F.3d 934, 936 (9th Cir. 1996) ("Generally, courts do not look to post-incident cases to determine whether the law was clearly established at the time of the incident.").

Carter's remaining contentions are not persuasive.

**AFFIRMED**.